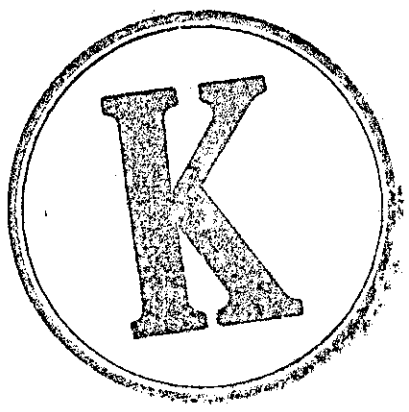
1950 File No. 0. Khas Lands/50

Legal Department
A. Branch



Subject:- Opinions under the
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Bombay Khar Lands Rules, 1949. Rules 17.

There is no objection to declaring, under rule 17 of the Bombay Khar Lands Rules, 1949, a uniform rate of contribution as proposed by the Khar Lands Development Board. However, the liabilityto pay such contributions can be enforced only after the particular scheme is sanctioned.

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Remembrancer of Legal Affairs.

U.R. to R.D., No. 6658, dated the 16th May, 1950.

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Khar Lands Act, 1948 Section 85.

It does not appear that the Khar Lands Board has prepared a scheme under the Bombay Khar Lands Act, 1948 in regard to these lands. As soon as the scheme is prepared, the liabilities of all parties including Government for contribution towards the cost of the Scheme will be governed by section 85 of the Act. The fact that Government bore any portion of the cost for embankments in a different proportion or wholly will be immaterial.

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U.R. to Chairman, Khar Development Board through R.D., No. 9187, dated the 2nd July, 1960.

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Bombay Khar Lands Act, 1948, Section 28(2).

Cost of scheme whether landlord can pass it on to the tenants.

The liability of the landlord to bear 40% of the cost of the scheme under section 28(2) of the Bombay Khar Lands Act, 1948 is absolute. The intention of the legislature was not to allow the landlord to pass it on to his tenant in any circumstances. Section 23 of the Bombay Tenancy and Agricultural Lands Act which appears to be relied upon by the landlord has no application. It is possible that he may claim ———— recoupment of his share from the tenant on the basis of agreement usage or custom as evidenced by a decree of the civil court and with a view to removing any doubt as to whether section 28(2) of the Bombay Khar Lands Act overrides an agreement, usage or custom that the tenant of a Khar Land should bear the costs of repairing, it may be suitably amended.

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U.R. to R.D., No. 10746; dated the 29th July 1950.

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Bombay Khar Lands Act, 1948.

Sections 15(3), 16 and 85.

It appears that the repairs to the Anikhar Band were originally done by Government in 1936 and repairs thereto have since then been carried on by Government; and in consideration thereof the cultivators have agreed to pay a Khar Bandisti Ahar of Rs. 2-8-0 per acre and agreements have been executed for the purpose. The question raised for R.L.A.'s consideration is whether after a scheme is prepared under the Bombay Khar Land s Act, 1948, Government would be entitled to recover Khar Bandisti Ahar.

2. Under section 16 of the Bombay Khar Lands Act, 1948, on the date on which the scheme is published in the Official Gazette under sub-section (3) of section 15 it shall come into force and shall have effect as if it were enacted in this Act. It is clear from this provision that when a scheme is duly prepared and brought into force it will have a statutory effect. Under section 85(1) the cost of the scheme will have to be borne by Government, landlords and tenants in the proportions specified in sub-section (2) and under section 81(1) all landlords and tenants and allowners of lands benefited or protected by the embankments included in ~~xx~~ a scheme under this Act shall pay to the Board an annual contribution which shall be levied and paid in such manner and at such rate and subject to such conditions, if any, as may be prescribed. It follows therefore, that the liability to pay the annual contribution for the repairs shall be on the landlords and tenants nd all owners of lands with the result that Government would be relived of the liability to spend over the repairs under the agreements entered into with the cultivat

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When Government is relieved even of such liability it can have no right to levy Khar Bandisti Cess, annually from the cultivators under the agreements. The view taken by the Khar Lands Development Board is correct. The Revenue Department appears to rely on R.L.A.'s opinion No. 9137 dated the 3rd July 1950 in support of Government's claim to continue to levy Khar Bandisti Cess even after the scheme under the Bombay Khar Lands Act, 1948, comes into force. In that Opinion of the R.L.A. it is nowhere stated that such right of Government would continue to survive even after framing the scheme. All that has been stated in that Opinion is that the fact that Government bore any portionof the cost for embankment in a different proportion or wholly would be immaterial when the scheme comes into operation. This will show that Government's liability to pay xxx the contribution under section 25 of the Act will be operative notwithstanding the fact that Government bore any portionof the cost of embankment in a different proportion or wholly prior to the coming into operation of the scheme.

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U.R. to R.L., No. 15560; dated the 3rd November 1950;

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Bombay Khar Lands Act, 1948, Sect. 15(2), 16 etc.

The question for the consideration of the R.L.A. is whether the Dahisar Kashimbi Khar Lands Development Scheme as revised by the K.L.D. Board should be prepared de novo and published as required by sub-section (2) of the section 15 of the Bombay Khar Lands Act, 1948.

2. Sub-section (2) of section 15 of the Bombay Khar Lands Act, 1948, empowers the State Government to sanction a draft scheme submitted by the Board. Sub-section (3) provides that if the scheme is sanctioned under sub-section (2) it shall be published in the Bombay Government Gazette and in the villages and at the head-quarters of the taluka or mahal and of the district inwhich thelands included inthe scheme are situate. Section 16 provides that on the date on which the scheme is published in the Official Gazette under sub-section (3) of section 15 it shall come into force and shallhave effect as if it were enacted in the Act. The scheme in question was sanctioned by Government and has been published inthe Bombay Government Gazette dated 16-6-1950. Under section 16, therefore, the scheme has come into force from that date and has to be acted upon as if it were enacted in the Bombay Khar Lands Act, 1948. From the second para of the R.D. Office note at p. 21 ante it appears that what that Department proposes to do is to rescind this scheme and to start with the framing of a new scheme as now revised by the Board. Since the scheme has achieved statutory force and since there is no specific provision in the Act empowering Government to modify or supplement a scheme sanctioned under sub-section (2) of section 15, the only feasible course appears to be to make a fresh scheme in respect of the items now found to be necessary.

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D.O. to R.D., No. 18536, dated the 20th September, 1950.

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